

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

File No. 122-SAT-WAIV-95

Petition of  
GENERAL COMMUNICATION, INC.  
for a Partial Waiver  
of the Bush Earth  
Station Policy

MEMORANDUM OPINION AND ORDER

Adopted: January 30, 1996; Released: January 30, 1996

By the Chief, International Bureau:

Introduction

1. We hereby grant General Communication, Inc's ("GCI") petition for partial waiver<sup>1</sup> of the Commission's Bush policy<sup>2</sup> to allow GCI to construct and operate up to fifty earth stations in sparsely populated rural Alaskan communities ("Bush communities")<sup>3</sup> to provide inter-exchange message telecommunications services ("MTS"). The Commission's 1982 policy on ownership and operation of domestic earth stations in Bush communities in Alaska provides that only one satellite earth station can be licensed in each Bush community to provide conventional inter-exchange MTS. Alascom Inc., alone or in partnership with United Utilities, Inc. ("United"), a local exchange carrier,<sup>4</sup> is authorized to construct and operate these facilities and provide MTS service.<sup>5</sup> The basis of our Bush policy is the belief that duplicative proposals for facilities in Alaska Bush communities are mutually exclusive because one fa-

cility could provide all the services proposed by either party, and there appeared to be no public interest benefit in the construction of duplicative MTS facilities.<sup>6</sup> However, the Commission can waive its policy if "good cause" is shown.<sup>7</sup> Granting a partial waiver will allow GCI to provide, in fifty Bush communities, technologically advanced services such as those designed to support education, telemedicine, and other specialized applications currently unavailable to Bush community residents.

Background

2. The Bush policy was developed at a time when no MTS competition, in any form, had been authorized in Alaska. Since that time, both the state of Alaska and the Commission have recognized the benefits of competition and have worked to introduce competition into the Alaskan telecommunications market. There is now active facilities-based interstate MTS competition for Alaskan phone lines.<sup>8</sup> In 1990, the Alaska state legislature passed an Act opening most of its intrastate telecommunications markets to facilities-based competition.<sup>9</sup> More recently, the Commission concluded that the implementation of a new market structure recommended by the Joint Board would increase competition and further economic growth in Alaska by lowering prices and stimulating the demand for telecommunications services.<sup>10</sup> Competition has yet to be extended to the Bush communities.

3. GCI now seeks to obtain a partial waiver of the Commission's Bush policy to serve fifty Bush communities by constructing and operating a Bush earth station demonstration project. The project entails use of new Demand Assigned Multiple Access-based earth station technology that GCI believes will provide improved service to Bush residents.<sup>11</sup> The fifty communities are currently being served by Alascom alone or in partnership with United. Alascom, United, and Alaska Telephone Association ("ATA") oppose GCI's petition, claiming GCI has not demonstrated "good cause"<sup>12</sup> necessary to support its waiver request.<sup>13</sup> Telephone Utilities of the Northland, Inc. ("TUNI") argues that the petition should be referred to the

<sup>1</sup> GCI Petition for Waiver (filed June 23, 1995) ("GCI Petition").

<sup>2</sup> See Policies and Rules Governing the Ownership and Operation of Domestic Satellite Earth Stations in Bush Communities in Alaska, 92 F.C.C. 2d 736 (1982) ("Tentative Decision") *aff'd* 96 F.C.C. 2d 522 (1984) ("Final Decision").

<sup>3</sup> Generally, Bush communities are in remote areas and have less than 1,000 citizens. See Tentative Decision at ¶ 61.

<sup>4</sup> Prior to 1969, the United States Air Force provided communications within the state of Alaska. Thereafter, Alascom acquired the right to operate the Alaska Communications System from the Air Force. Ultimately, the Commission determined that it would be in the public interest for the Bush facilities to be owned jointly by Alascom and local exchange carriers. See Final Decision at ¶ 42. Alascom and United later entered into a joint ownership agreement and Alascom, alone or in partnership with United, have been the providers of interstate facilities-based MTS in Alaska Bush communities.

<sup>5</sup> Final Decision at ¶ 42.

<sup>6</sup> Tentative Decision at ¶ 1 and n.12.

<sup>7</sup> 47 C.F.R. § 1.3 (the Commission may grant a waiver "for good cause shown").

<sup>8</sup> MTS-WATS Market Structure Inquiry (Phase II), 92 F.C.C. 2d 787 (1982).

<sup>9</sup> Act of June 7, 1990, 1990 Alaska Sess. Laws Ch. 93.

<sup>10</sup> Under the new market structure, the Joint Service Agreement between American Telephone & Telegraph ("AT&T") and Alascom will be terminated. AT&T will be able to provide MTS service between Alaska and the other U.S. states at integrated rates. Alascom will be able to offer interstate MTS independently from AT&T under its own tariff and with no obligation to charge AT&T's integrated rates. See Integration of Rates and Services for the Provision of Communications between the Contiguous States and Alaska, 9 F.C.C. Rcd. 3023, ¶ 2-3 (1994).

<sup>11</sup> GCI Petition at 4.

<sup>12</sup> See 47 C.F.R. § 1.3.

<sup>13</sup> Alascom Opposition (filed August 11, 1995); United Opposition to Petition for Waiver (filed August 11, 1995); ATA Opposition to Petition for Waiver (filed August 11, 1995).

United requested an extension of time to file reply comments which GCI opposed. United filed its reply comments on September 25, 1995. We deny United's request for an extension of time. However, in our discretion, we will treat United's reply comments as informal objections. See 47 C.F.R. § 1.41.

Federal-State Alaska Joint Board ("Joint Board")<sup>14</sup> and ATA argues that the petition should be resolved in "the broader context of an open and competitive market place that is being developed through legislative and FCC efforts."<sup>15</sup> For the reasons set forth below, we grant GCI's petition for a partial waiver.

#### Discussion

4. In determining whether to waive a particular policy, the United States Court of Appeals for the District of Columbia has stated that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>16</sup> A waiver is appropriate where special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.<sup>17</sup> Based on the benefits that may be derived by Bush community residents as a result of GCI's demonstration project, there is "good cause" to grant a partial waiver of our Bush policy.

5. Satellite technology is the only practical way to provide telecommunications services to remote Bush communities. GCI's proposal involves facilities notably different from the ones operated by Alascom and United and has the potential to provide Bush residents with a superior alternative at less cost than the current MTS offering. GCI proposes the use of Demand Assigned Multiple Access ("DAMA") equipment. This type of system offers the possibility of smaller easily deployable earth station antennas and less transmitter power which will likely result in lower cost and improved service to the customer. It provides an opportunity to introduce competition, which gives area residents access to innovative and alternative technology.

6. Alascom and United state that they planned to deploy DAMA technology in the latter part of last year and thus there is no need to grant GCI's proposal.<sup>18</sup> Whether or not Alascom and United have begun to deploy DAMA technology, we find no reason to hold the residents of Alaska's Bush communities to Alascom's or United's schedule. GCI points out that although the Commission instructed Alascom to investigate DAMA technology sixteen years ago<sup>19</sup> and although Alascom has promised to install DAMA, such technology, at the time GCI filed its reply comments, had not been used to improve service to Bush community residents.<sup>20</sup> In light of this, we are unpersuaded by arguments that our decision here should turn on

Alascom's or United's plan to deploy DAMA technology or whether the Bush communities can only support one carrier. A partial waiver provides a discrete opportunity for the marketplace, not the State of Alaska or the Commission, to determine who should serve certain Bush communities.<sup>21</sup> Theresidents themselves are in the best position to determine which carrier best suits their particular needs. If the market is, a natural monopoly and GCI is unable or unsuccessful at demonstrating that Bush service can be provided cost-effectively and with service features equivalent to those long available in urban areas, it is GCI that will bear the economic consequences. As GCI states, if the project is unsuccessful, GCI will likely not seek to expand the network and will absorb any losses resulting from the project.<sup>22</sup> If it is successful the needs of Bush community residents will have been served.

7. A number of parties request that we postpone action on GCI's petition until the Alaska Public Utilities Commission ("APUC") reviews GCI's waiver request. ATA requested that the petition be determined in the context of "an open and competitive marketplace," and TUNI specifically requested that the Commission refer the petition to the Joint Board. Since that time, the APUC has approved GCI's waiver request to proceed with its 50-site demonstration project for a two year time-period.<sup>23</sup> There do not appear to be any intrastate regulatory interests, other than those of the APUC, that are affected by granting this waiver. Because the Communications Act does not require the convocation of a Joint Board to examine this issue, and because we concur in the APUC's determination, there is no basis to delay the GCI project by deferring it to a Joint Board for further consideration.

8. We deny United's request for dismissal of GCI's petition based on mootness under Section 1.401(e) of our rules. In contrast to TUNI's assertions, we also find GCI's petition and reply adequate. GCI's petition for partial waiver of our Bush policy and petition for rulemaking<sup>24</sup> requesting a comprehensive review of our Bush policy involve very different levels of relief. GCI's waiver request involves only one service provider, GCI, a portion of the Bush sites, and will be granted for a finite period of time that can be extended for good cause. Opening the entire Bush market to competing service-providers would require Commission amendment to its Bush policy. Pending any change in our rules and policies, a waiver is necessary if GCI seeks to serve Bush communities. GCI has provided sufficient information in its petition and reply, and we find that there is an adequate record on which to make our

<sup>14</sup> TUNI Comments at 8 (filed August 11, 1995).

<sup>15</sup> ATA Opposition to Petition for Waiver at 1 (filed August 11, 1995).

<sup>16</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972).

<sup>17</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>18</sup> Alascom Opposition at 3 (filed August 11, 1995); United Opposition at 16 (filed August 11, 1995).

<sup>19</sup> GCI Reply at 8 (filed August 24, 1995) *citing* *RCA American Communications, Inc. and Alascom Inc.* 74 F.C.C. 2d 435, 468 (1979).

<sup>20</sup> GCI Reply at 8 (filed August 24, 1995) *citing* Response of Alascom Inc. to Federal/State Joint Board Request for Data Relating to the Alaska Market, CC Docket 83-1376, Response No. 2, p. 5, dated February 27, 1989.

<sup>21</sup> We are not convinced Bush communities can support only one carrier in the current satellite telecommunications environ-

ment. GCI is unlikely to enter the Bush market unless it is confident that its average costs of providing service will meet or be lower than the marginal cost to Alascom. Without a competitive price, or a higher standard of service, GCI will not be able to compete with Alascom. The threat of potential competition in Bush markets may encourage the incumbent service-provider to operate as efficiently as possible, which may in itself reduce costs and thereby rates for the current services and improve or increase service.

<sup>22</sup> GCI Reply at 17 (filed August 24, 1995).

<sup>23</sup> In the Matter of Request by General Communications, Inc., for Waiver and Approval of a 50-site Demonstration Project, Bench Order Granting Waiver, U-95-38(8), (dated November 9, 1995); *see also* In the Matter of Request by General Communications, Inc., for Waiver and Approval of a 50-site Demonstration Project, Docket No. U-95-38, Petition for Reconsideration (filed November 29, 1995).

<sup>24</sup> GCI Petition for Rulemaking (filed January 10, 1990).

determination.<sup>25</sup> We will require GCI to file an FCC Form 493 application for blanket authority to install such earth stations.

#### Conclusion

9. Based on the record before us, there is good cause to support GCI's request for a partial waiver of the Commission's Bush policy. The potential public interest benefits in providing Bush communities with increased service options, improved quality, and lower rates outweigh a rigid adherence to a policy more than a decade old that does not provide for technological advancements and market changes. We are also encouraged by Alaska's more recent experiences with competition in its telecommunications market. This waiver allows GCI to construct and operate no more than 50 earth station sites for a period of time to run concurrently with APUC's two year waiver period. Any broad change in our Bush policy will be undertaken in a separate proceeding with ample opportunity for parties to comment. Our action here attempts to ensure that given their geographic isolation, Bush community residents have access to the advanced communication services that urban residents do, at the most economical rates possible.

#### Ordering Clause

10. Accordingly, IT IS ORDERED that General Communication, Inc.'s Petition for Waiver of the Commission's Bush policy to construct and operate no more than 50 earth stations in Alaska Bush communities IS GRANTED in accordance with the terms and representations set forth in its petition, reply comment, and this order.

11. IT IS FURTHER ORDERED that this waiver will run concurrently with the two year waiver period granted by the Alaska Public Utilities Commission in Bench Order Granting Waiver and Approval of a 50-site Demonstration Project, U-95-38(8), dated November 9, 1995.

12. IT IS FURTHER ORDERED that this waiver is subject to General Communication, Inc. filing FCC Form 493 application and attaching an exhibit detailing the city and geographic coordination of each of the fifty sites in the demonstration project and the date service will begin at each site.

13. IT IS FURTHER ORDERED that this waiver is subject to General Communication, Inc. complying with all relevant requirements of Part 25 of the Commission's rules, 47 C.F.R. Part 25, and the Commission's grant of operating authority for the proposed earth stations.

#### FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris  
Chief, International Bureau

<sup>25</sup> See also Alascom Reply at 2 (filed September 8, 1995) (noting that in light of the information supplied in GCI's reply comments, Alascom's concerns of the adequacy of the record are being met).